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FILED

DEC - 2 2009

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

9 Attorneys for the United States of America

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,) No. CR 09-00868 CW

14 Plaintiff,)

15 v.)

16 AUGUSTIN ORDAZ,
a/k/a "Augustin Ordaz-Villagomez,")

AMENDED STIPULATION AND
[PROPOSED] PROTECTIVE ORDER
REGARDING PRODUCTION OF
CONFIDENTIAL DISCOVERY

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19 Plaintiff, by and through its attorney of record, and the defendant, by and through his
20 attorney of record, hereby stipulate and ask the Court to find as follows:

21 1. A federal grand jury has returned an indictment charging the defendant with
22 possession with intent to distribute methamphetamine.

23 2. The government believes that the proposed protective order is necessary to
24 preclude some discovery materials, which may contain the identities of potential witnesses and/or
25 cooperating witnesses or information from which those identities may be discovered, from being
26 disseminated among members of the public and to the defendant. Specifically, the government
27 believes that the proposed protective order will greatly reduce the possibility that individuals will

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1 misuse discovery materials to identify, intimidate, and/or harm witnesses and/or defendants.

2 3. Defendant and his defense counsel deny that any person would be endangered by
3 the defendant's possession of any discovery material in this matter. The parties agree that no
4 inference should be drawn about the defendant's dangerousness because of his agreement to
5 enter into this stipulation and be subject to the protective order.

6 4. The parties agree that the following conditions, if ordered by the Court, should
7 serve the government's interest in protecting witnesses, defendants, and other members of the
8 community and reduce the risk of retribution against cooperating witnesses by precluding the
9 circulation of these documents and digital media (e.g., CD-ROMs, DVDs, and digital
10 photographs) throughout the prison system and the community, while permitting the defense to
11 obtain discovery required by Federal Rule of Criminal Procedure 16 and the United States
12 Constitution. Accordingly, the parties jointly request that the Court order as follows:

13 a. For purposes of this Order, the term "defense team" refers to: (1) the
14 counsel of record for the defendant; (2) defense investigators assisting the defense team with this
15 case; (3) employees of the defense team's law office; and (4) any expert witnesses who may be
16 retained or appointed by the defense team. For purposes of this Order, a term "defense team"
17 does not include the defendant.

18 b. The government is authorized to provide the defense team with discovery
19 required by F.R.Cr.P. 16 and may, in its discretion, designate any discovery produced as
20 "Confidential Discovery" to be governed by the terms of this protective order. The government
21 may designate discovery as confidential by marking such discovery as "CONFIDENTIAL" and
22 shall produce such discovery on a document, CD, or DVD marked "WARNING: CONTENTS
23 SUBJECT TO PROTECTIVE ORDER. UNAUTHORIZED COPYING OR VIEWING IS
24 SUBJECT TO PUNISHMENT AS CONTEMPT OF COURT."

25 c. The defense team shall not permit anyone, including the defendant, to have
26 possession of Confidential Discovery pursuant to this Order other than the defense team.

27 d. The defense team shall not divulge the contents of any Confidential

1 Discovery provided pursuant to this Order to anyone other than the defendant. A defense team
2 member may show Confidential Discovery to the defendant only in the physical presence of a
3 defense team member, and may not permit the defendant to have physical possession of the
4 Confidential Discovery.

5 e. The defense team shall not permit Confidential Discovery provided
6 pursuant to this Order to be outside of the defense team's offices, homes, vehicles, or personal
7 control. The defense team may take Confidential Discovery into a custodial facility to show it to
8 the defendant, but, as explained above, the defense team must maintain physical possession of
9 the Confidential Discovery and may not allow the defendant to have physical possession of the
10 Confidential Discovery.

11 f. In the event that one of the parties files a pleading that references or
12 contains Confidential Discovery or information therefrom, that filing must be made under seal.

13 g. The defense team shall return all Confidential Discovery provided
14 pursuant to this Order to the government fourteen calendar days after any one of the following
15 events, whichever occurs latest in time: dismissal of all charges against the defendant; the
16 defendant's acquittal by court or jury; the conclusion of any direct appeal; the expiration of the
17 time period for filing a motion pursuant to 28 U.S.C. § 2255; or the district court's ruling on any
18 motion filed pursuant to 28 U.S.C. § 2255. In the event that the defense team has made notes or
19 marks on the Confidential Discovery constituting work product the defense team shall return the
20 materials to the government in a sealed container labeled "WORK PRODUCT-DESTROY."

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h. After return of the materials, the government may destroy the Confidential Discovery.

IT IS SO STIPULATED.

DATED: December 2, 2009

Respectfully submitted,

**JOSEPH P. RUSSONIELLO
United States Attorney**

WADE M. RHYNE
Assistant United States Attorney

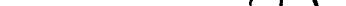
DATED: 7-2-09

~~NICHOLAS F. REYES
Counsel For Agustin Ordaz~~

[PROPOSED] ORDER

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED: The government is hereby authorized, pursuant to Federal Rule of Criminal Procedure 16, to disclose discovery to the defense team and may designate discovery to be governed by this protective order as Confidential Discovery. The parties are hereby ordered to comply with the conditions set forth in paragraphs 4(a)-(h) of this stipulation and order pursuant to Federal Rule of Criminal Procedure 16(d)(1).

DATED: 12/2/09


HON. CLAUDIA WILKEN
UNITED STATES DISTRICT COURT JUDGE

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